

REMARKS

Applicant requests that claims 2, 3, 10, 12, 13, 20, 22, 23, and 30 be cancelled without prejudice.

§ 101

The Patent Office rejected claims 1-10 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. More specifically, the Patent Office stated that claims 1-10 are not within the technological arts. The Patent Office went on to state that claims 1-10 do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in person or by use of a pencil and paper without the need of a computer or other technology.

Applicant has amended claim 1 to claim a method performed by a computing apparatus. As such, claims 1-10 are within the technological arts, and the rejection of claims 1-10 under 35 U.S.C. § 101 cannot stand.

§ 112

The Patent Office rejected claims 1-30 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Patent Office stated that the use of the term "bear" makes the relationship between the event occurrence and the actual skill level vague and indefinite and that the wherein clause "wherein the skill level of the individual may or may not bear on the defined performance for the individual carrying out the task." The Patent Office also stated that claims 1, 11, and 21 are further vague and indefinite for failing to clarify how a result of the event occurrence is determined.

Applicant has cancelled claims 2, 3, 12, 13, 20, 22, 23, and 30 as discussed above.

Applicant has amended independent claims 1, 11, and 21 to further clarify the claim language by replacing the phrase "bearing on" with "increasing" and the phrase "bears on" with "increases".

Regarding the wherein clause, Applicant respectfully disagrees with the Patent Office's position. The entire gist of the invention is to determine whether training to increase a skill of an individual will also increase the individual's performance. As such, the increasing the actual

skill level of the individual may or may not increase the defined performance of the individual. The goal of the present invention is to make this determination. Accordingly, the wherein clause is not indefinite.

Regarding the clarity of how the result of the event occurrence is determined, Applicant has amended claims 1, 11, and 21 to clarify that a relationship between the first and second actual performance metrics and the actual skill level of the individual before and after the event occurrence is analyzed. Based at least partially on this analyzed relationship, it is determined whether the event occurrence increasing the actual skill level of the individual also increases the defined performance of the individual.

Thus, claims 1, 4-9, 11, 14-19, 21, and 24-29 are not indefinite and the rejection of these claims under 35 U.S.C. § 112, second paragraph, should be withdrawn.

§ 102

The Patent Office rejected claims 1-30 under 35 U.S.C. §§ 102(a) and 102(e) as being anticipated by Nashner (U.S. Patent No. 6,190,287). As discussed above, claims 1-10, 20, and 30 have been cancelled without prejudice. Applicant has amended claim 1 to include the subject matter of claims 2 and 3, amended claim 11 to include the subject matter of claims 12 and 13, and amended claim 21 to include the subject matter of claims 22 and 23.

Regarding claims 1, 11 and 21, Nashner fails to expressly or inherently disclose defining a role for fulfilling a desired business outcome and associated with a required skill having a required skill level and a defined performance. With respect to original claim 3, the Patent Office stated that Nashner discloses a role associated with a required skill having a required skill level and the defined performance and pointed to col. 4, lines 46-63; col. 6, line 63-col. 6, line 1, wherein Nashner discloses determining the subject's motivation and the appropriateness of the selected training by comparing the subject's initial functional performance assessment date with performance and training compliance data derived from a reference population. However, Nashner fails to disclose at least defining a role for fulfilling a desired business outcome.

Nashner also fails to expressly or inherently disclose quantifying a first actual performance metric for the defined performance of the individual before an event occurrence increasing the actual skill level for the possessed skill of the individual, wherein increasing the actual skill level of the individual may or may not increase the defined performance of the

individual. As stated by the Patent Office, Nashner discloses a system that “monitors progress towards performance goals, meaning that the training (i.e., event occurrence) affects the skill of the individual in such a way as to improve the performance of the individual carrying out the task ... [s]ince the system monitors training effectiveness, the training must bear on the actual skill level of an individual.” The statement illustrates a misunderstanding of the claim language on the part of the Patent Office. The Patent Office states that, in Nashner, the training bears on the skill level of the individual such that both the skill and performance of the individual is improved. However, as claimed, the event occurrence increases the individuals skill level, but increasing the skill level of the individual may or may not increase the defined performance. The gist of the present invention is determining whether increasing the skill level of a skill of an individual also increases a defined performance of the individual, whereas Nashner discloses a system where improving skill of an individual performing a training exercise always improves performance of the individual performing the training exercise.

Nashner also fails to expressly or inherently disclose quantifying a second actual performance metric after the event occurrence, analyzing a relationship between the first and second actual performance metrics and the actual skill level of the individual before and after the event occurrence, and determining whether the event occurrence increasing the actual skill level of the individual also increases the defined performance of the individual based at least partially on the relationship between the first and second actual performance metrics and the actual skill level of the individual before and after the event occurrence. Nashner discloses determining whether a subject is unmotivated, needs to be re-instructed on performing the training exercise, or unchallenged by the training exercise based on previous and current accuracy and quantity values. However, Nashner fails to disclose analyzing a relationship between the first and second actual performance metrics and the actual skill level of the individual before and after the event occurrence. Further, Nashner does not determine whether the event occurrence increasing the skill level of the individual also increases the performance of the individual.

Since Nashner fails to disclose each and every element of claims 1, 11 and 21, claims 1, 4-9, 11, 14-19, 21, and 24-29 are allowable.

In view of the discussion above, claims 1, 4-9, 11, 14-19, 21, and 24-29 are allowable. If any issues remain, the examiner is encouraged to contact the undersigned attorney of record to expedite allowance and issue.

Respectfully submitted,

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